

Senate Bill 248  
March 21, 2007  
Presented by Bob Lane  
House Natural Resources Committee

Mr. Chairman and committee members, I am Bob Lane, Chief Legal Counsel with Montana Department of Fish, Wildlife & Parks (FWP).

SB 248 is the product of 15 years of negotiations between the State of Montana, represented by the Reserved Water Rights Compact Commission and the United States Forest Service. The Compact Commission exists, and these negotiations were pursued as an alternative to settling federal claims for reserved water rights through litigation. The negotiations were lengthy and certainly not without cost, but were far cheaper than a protracted court battle.

FWP has been interested and involved in the negotiations for many years. Naturally, we evaluated the agreement's potential to protect the waters of the state to support sustainable fisheries. The proposed compact does this in two ways. First, it immediately grants the Forest Service instream water rights on 76 streams for which data had been collected, mostly by FWP, and instream flow recommendations had already been made. Second, the compact establishes a process whereby the Forest Service has the opportunity to apply to the Department of Natural Resources and Conservation (DNRC) for additional instream flow reservation on streams flowing through Forest Service lands, by gathering data and quantifying those streams' instream flow needs.

FWP would support a process whereby the Compact Commission, or perhaps DNRC if the Compact Commission no longer exists, could agree to the use of other appropriate instream flow quantification methods geared toward establishing flows that support fisheries. We believe that appropriate methodologies must be scientifically defensible, that is they must have gone through a process of peer review.

The Compact Commission sunsets on July 1, 2009. Getting this compact finalized now would contribute significantly to the Compact Commissions' ability to focus on other negotiations and complete its work by that date. The instream flow rights that result will not only sustain vital fisheries, but will protect downstream water users who depend on water flowing from streams whose headwaters are on the National Forests.